

AN ORDINANCE

APPROVING AMENDMENTS TO SECTIONS III-1 AND III-2 OF THE BUSINESS PRIVILEGE TAX REGULATIONS TO CLARIFY THE ALLOCATION OF BUSINESS DONE AND GROSS VOLUME OF BUSINESS FOR PURPOSES OF THE BUSINESS PRIVILEGE TAX.

AMENDMENTS TO BUSINESS PRIVILEGE TAX REGULATIONS

THE COUNCIL OF THE CITY OF READING HEREBY APPROVES THE FOLLOWING AMENDMENTS TO THE BUSINESS PRIVILEGE TAX REGULATIONS THAT ARE SOUGHT TO BE ESTABLISHED, PRESCRIBED, ADOPTED AND PROMULGATED BY THE TAX MANAGER:

SECTION 1. Amending Section III-1. WHAT CONSTITUTES "DOING BUSINESS IN THE CITY OF READING" changing the language in Paragraph a.

- a. Whether or not a person carries on a taxable activity within the meaning of the Business Privilege Tax Act is essentially a question of fact. In general, taxable activity includes any trade, business, profession, vocation, or commercial activity that is carried on in the City of Reading. The tax is imposed on any person who exercises the privilege of carrying on certain activities in the City of Reading and is measured by receipts ~~received or allocable~~ attributable to the City of Reading.

SECTION 2. Amending Section III-2. ALLOCATION OF BUSINESS DONE AND GROSS VOLUME OF BUSINESS changing the language in Paragraphs a. and b. and adding new Paragraphs g., h., i., j. and k.

- a. General. Receipts from any transactions shall be attributable to the City of Reading if ~~any event forming a part of the transaction occurs within~~ the person's sole place of business is located in the City of Reading. If a person has more than one place of business in Pennsylvania, but no interstate commerce, the receipts attributable to the City of Reading shall be equal to total receipts times a fraction, the numerator of which shall be receipts from transactions within the City of Reading and the denominator of which shall be receipts from transactions within the City of Reading and other place(s) of business in Pennsylvania. If a person has more than one place of business in Pennsylvania, and interstate commerce, the receipts attributable to the City of Reading shall be equal to total receipts, less receipts attributable outside of Pennsylvania, times a fraction, the numerator of which shall be receipts from transactions within the City of Reading and the denominator of which shall be receipts from transactions within the City of Reading and other place(s) of business in Pennsylvania.

- b. Persons rendering professional, commercial, industrial or personal services. If a person engaged in a profession or vocation or in rendering personal services maintains a place of business only in the City of Reading, the entire receipts from personal services must be included in the measure of the tax whether or not the services are performed in the City of Reading. Receipts will be deemed attributable to the City of Reading if they result from the efforts of employees who work in, or from, or attached to the taxpayer's City of Reading place of business.

(1) General. Receipts from any service shall be attributable to the City of Reading if the transaction or any activity in connection therewith occurs within the City of Reading; or is generated, directed, managed, or controlled by a place of business in the City of Reading and contributes to the taxpayer's ultimate business purpose; or where there is no other place of business.

(2) Out of City Branch Office. Where a taxpayer maintains a bona fide branch office or place of business outside the City of Reading, he will nevertheless be subject to Business Privilege Tax liability on those receipts which are the result of services rendered or business activities generated within or attributable to the City of Reading. Said taxpayer will be permitted to exclude his branch office receipts from his taxable gross receipts only where he sustains the burden of proving that the City of Reading does not have the requisite minimal contact or nexus with those receipts to sustain the imposition of the Business Privilege Tax.

g. There will be no allocation for receipts generated in intrastate commerce unless the receipts sought to be excluded from Business Privilege Tax returns are clearly allocable to a bona fide branch office or other place of business located outside of the City of Reading. The burden of proving that any receipt is allocable to an office or other place of business located outside of the City of Reading is on the taxpayer and he must be able to support any such exclusion of receipts from the City of Reading on the basis of clear and objective evidence shown on his books, records and accounts. If a taxpayer does not keep his books, records and accounts in a manner which will clearly and objectively show the allocation of receipts to his various branch office or places of business, the Business Privilege Tax will be based

on the entire amount of gross receipts from all intrastate sources. The receipts will not be allocated on the basis of subjective and unrecorded data.

h. The following is a list of factors which are relevant, but not conclusive, for determining whether a person maintains a bona fide non-City branch office within the meaning of this section:

- (1) Name of taxpayer in telephone directory, or building directory (if applicable), or on door leading to entrance of office or otherwise displayed on the office exterior.
- (2) Stationery and calling cards showing address.
- (3) Storage of inventories or display samples at location in question.
- (4) A written lease for the space involved and the payment of rent.
- (5) A written agreement for the maintenance of an office by an agent or agency on behalf of the taxpayer.
- (6) Employees based in or operating out of a location outside of the City of Reading.
- (7) The expenses attributable to an office located outside of the City of Reading are allowed as deductions on the taxpayer's federal income tax return.
- (8) The office serves as a base of operations from which the person manages, directs and controls business activities.

No single factor will raise a presumption that a bona fide office located outside of the City of Reading exists. Use by the taxpayer or his agents or employees of facilities provided by the taxpayer's client, employer, customer, or any other person, even for a protracted period of time and even where such use constitutes part of the contractual or business arrangement entered into by the taxpayer with the said client, employer, customer, or any other person does not establish a branch office located outside of the City of Reading for purposes of allocation of gross receipts.

i. A field trailer used by contractors can be considered a bona fide branch office located outside of the City of Reading office only if all the following activities are conducted therein:

- (1) It bears the name of the taxpayer.
- (2) It is staffed by taxpayer's employees who report directly to the field site, and who control the operation from that site.
- (3) At least one telephone is present and listed in the taxpayer's name.
- (4) It is maintained at the same site for no less than sixty (60) days.
- (5) It is owned and maintained by the taxpayer or has all the indicia of ownership by the taxpayer.
- (6) Business is solicited.
- (7) Meetings are held.
- (8) Mail is received.
- (9) Supplies are stored.
- (10) Accounting and other administrative duties are performed.

i. An office maintained in the taxpayer's home which is located outside of the City of Reading is a bona fide office or place of business only if it meets the test set forth in h. above and if it is exclusively used on a regular basis as such for federal income tax purposes under the United States Internal Revenue Code of 1976, as amended.

k. A motel or hotel residence, used on a long-term basis, is not a bona fide branch located outside the City of Reading unless it fulfills the criteria set forth above.

SECTION 3. Amending Section III-3. INTERSTATE COMMERCE changing the language in Paragraphs a. and b. and adding new Paragraphs j., k and l.

- a. General. Receipts from transactions involving more than one state are not exempt from the Business Privilege Tax, but are to be included in the tax base either in their entirety or, excluded in their entirety, or apportioned as provided in these regulations. ~~Transactions defined below as interstate commerce are exempt from the tax. Those which do constitute interstate commerce are taxable in full.~~
- b. What Constitutes "Interstate commerce". Transactions will be deemed to involve interstate commerce only when ~~they directly involve the sale, exchange or transportation of commodities between the states, the transportation of passengers between the states, or the transmission of intelligence or communications between the states~~ there are significant transactions or activities conducted in states other than Pennsylvania that contribute to the generation of gross receipts. The citizenship or residence of the parties to the any transaction ~~is of no significance~~ has no relevance in determining the interstate character of a business. Where a sales transaction is involved, it is of no importance in which state title to the goods passes, or whether the goods are shipped f.o.b. one state to another.
- j. Apportionment of receipts from Interstate commerce. Where receipts cannot be allocated as set forth above in III-3.c.-i., receipts from interstate commerce may be apportioned in a manner similar to the sales factor for purposes of the Pennsylvania Corporate Net Income Tax under Article IV of the Tax Reform Act of 1971, as amended., and the regulations thereunder.
- k. Apportionment for Professional Services.
- (1) Professional fees derived from services billed on an hourly basis shall be apportioned by excluding receipts attributable to charges to the client for services performed out-of-state.
- (2) Professional services rendered on a flat or fixed fee basis or a contingent-fee basis shall be apportioned according to a ratio whose numerator consists of hours spent on the engagement while out-of-

state and whose denominator consists of total hours spent on the same engagement for the same client.

- (3) Professional services performed under a contract which sets forth the percentage or amount of the total contract price attributable to a specific activity to be performed out-of-state shall be apportioned according to the contract terms, as long as such amount is a reasonable allocation.

L. The following is a list of factors which are relevant, but not conclusive, for determining whether a person's activities in another state constitute interstate commerce:

- (1) A nexus in the foreign jurisdiction sufficient to support the imposition of a similar tax by the state.
- (2) A provision in the contract or agreement between the taxpayer and his client or customer which specifically assigns a reasonable portion of the overall fee to activities required to be performed in the foreign jurisdiction.
- (3) The length of time spent by the taxpayer in the out-of-state location.
- (4) The necessity for the services that are performed out-of-state in generating the overall gross receipts.
- (5) The inability of the taxpayer to perform the service which generates gross receipts in its entirety in Pennsylvania.
- (6) The number of employees who are required to perform the activities in the foreign jurisdiction. Utilizing an independent contractor located in the foreign jurisdiction to carry out of the taxpayer's out-of-state activities does not constitute the taxpayer's presence in a foreign jurisdiction for purposes of excluding receipts from the City of Reading's Business Privilege Tax.

(7) The person manages, directs and controls business activities. in the foreign jurisdiction.

SECTION 4. This Ordinance shall be effective for the tax year 2007 and annually thereafter.

Approved

2007

President of Council

Attest:

City Clerk

Submitted to Mayor:

Date: 1-23-07

Received by the Mayor's Office:

Date: 1-23-07

Approved by Mayor:

Date: 1-23-07

Vetoed by Mayor:

Date:

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Ordinance passed by the Council of the City of Reading, on the 22nd day of Jan A. D. 20 07. Witness my hand and seal of the said City this 22nd day of Jan A. D. 20 07.

CITY CLERK